

September 10, 2003

U.S. Patent and Trademark Office  
2011 South Clark Place  
Customer Window  
Crystal Plaza Two, Lobby, Room 1B03  
Arlington, Virginia 22202

Re: New Nonprovisional Division  
Patent Application under 37 CFR §1.53(b) in U.S.  
Applicant(s): Nilsson, Dan  
Title: METABOLICALLY ENGINEERED LACTIC ACID BACTERIA AND  
THEIR USE  
Atty's Docket: NILSSON=6B

Sir:

1. ☒ The present nonprovisional application is a ☐ Continuation  
☒ Divisional ☐ Continuation-in-part of prior application  
No. 08/981,098. This application is not a CPA. The prior  
application is not being abandoned in favor of this  
application.  
☒ Incorporation By Reference. The entire disclosure of the prior  
application, from which a copy of the oath or declaration is  
supplied herewith, is considered as being part of the  
disclosure of the accompanying application and is hereby  
incorporated by reference therein.
2. Attached herewith is the above-identified nonprovisional application  
under 37 CFR §1.53(b) for Letters Patent including:  
☒ Specification (44 pages): description (39 pages), claims (4  
pages) and abstract (1 page). The ☒ specification ☐ claims  
and ☒ abstract are copies of those filed in prior application  
no. 08/981,098. Claims 1-27 correspond to unelected claims 1-  
11 and 19-34 of the parent application. Note that claim 19  
referred erroneously to the "method" of bacterium claim 12.  
Hence, new claim 12, corresponding to 19, refers to the method  
of claim 1. Note that claims 27-29 all correspond to parent  
claim 34, which was in MD form.  
☒ 17 Sheets Drawings (Figures 1-4d).  
☒ Formal ☐ Informal  
☒ Figs. 1-4d of the drawings are copies of those filed in  
prior application no. 08/981,098.  
☐ Figs. \_\_\_\_\_ of the drawings are new.  
☒ Declaration and Power of Attorney (2 pages)  
☐ Newly executed ☒ Copy from prior application no.  
08/981,098  
☒ Preliminary Amendment  
☐ Supplemental Preliminary Amendment  
☐ Information Disclosure Statement with () references  
☒ PTO-1449 or PTO-892 forms from prior application(s)

09/10/03  
15915 U.S. PRO

22387 U.S. PRO  
10/658376  
09/10/03

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☐ A verified statement to establish small entity status under 37 CFR §1.9 and 37 CFR §1.27

☐ A verified statement claiming small entity status was filed on \_\_\_\_\_ in prior application no. \_\_\_\_\_. Status is still proper and desired.

☐ Sequence Listing (\_\_\_\_ pages) ☐ and CRF.

If no declaration is attached, or the basic filing fee is not paid, accord this application a filing date, and notify counsel pursuant to 37 CFR §1.53(f).

☒ Attached is Credit Card Payment Form, PTO-2038, authorizing payment in the amount of \$876.00 to cover:

☒ The filing fee calculated as follows:

CLAIMS AS FILED					
FOR	No. FILED	Base Number	No. EXTRA	RATE	BASIC FEE \$750.00
TOTAL CLAIMS	27	-20	7	x 18 =	\$126.00
INDEPENDENT	1	-3	0	x 84 =	\$
<input type="checkbox"/> First presentation of multiply dependent claim			280	x 280 =	\$
Reduction by 1/2 for filing by small entity					-\$
			TOTAL FILING FEE		\$876.00

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☐ Any additional fee required by the filing of an enclosed preliminary or supplemental preliminary amendment has been calculated as shown below:

CLAIMS AS FURTHER AMENDED					
FOR	No. FILED	Base Number	No. EXTRA	RATE	TOTAL
TOTAL CLAIMS		- 20		X 18 =	\$
INDEPENDENT		- 3		X 84 =	\$
<input type="checkbox"/> First presentation of multiply dependent claim				X 280 =	\$
Reduction by 1/2 for filing by small entity					-\$
				TOTAL CLAIMS FEE	\$

☒ Return Receipt Postcard (in duplicate)

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3. The following inventor(s) were named in the prior application:

<b>Full Name of Inventor 1</b> Dan NILSSON	
<b>Residence (City/State or City/Country)</b> Espergaerde, Denmark	<b>Citizen Of:</b> Denmark
<b>Post Office Address</b> Gefionsbakken 4A, DK-3060 Espergaerde, Denmark	
<b>Full Name of Inventor 2</b>	
<b>Residence (City/State or City/Country)</b>	<b>Citizen Of:</b>
<b>Post Office Address</b>	

(The latest inventor signed §1.63 Declaration in the parent application or its predecessors is hereby incorporated by reference. In the event of discrepancy between the Declaration and the list above, the Declaration controls and the list above is amended accordingly.)

☒ [XX] The inventors of the present application are the same as those on the prior application.

☐ [ ] Please delete the following inventors who were named on the prior application, but are not inventors of the invention being claimed in the present application: \_\_\_\_\_

☐ [ ] The following additional inventors are to be named on the instant application: \_\_\_\_\_

4. ☐ [ ] The benefit under 35 USC §119 is claimed of the filing date of: Application No. \_\_\_\_\_ in \_\_\_\_\_ on \_\_\_\_\_.

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A certified copy of said priority document ☐ is attached ☐  
was filed in progenitor case \_\_\_\_\_ on \_\_\_\_\_.

5. ☒ Certain documents were previously cited or submitted to the Patent and Trademark Office in the following prior application 08/981,098, which is relied upon under 35 USC §120. Applicants identify these documents by attaching hereto one or more form PTO-1449 and/or form PTO-892 listing these documents, and request that they be considered and made of record in accordance with 37 CFR §1.98(d). Per 37 CFR §1.98(d), copies of these documents need not be filed in this application.

While an IDS filed under §1.97 must contain a "list of all patents, publications or other information submitted for consideration by the Office", see §1.98(a)(1), the only requirement for the list is that it provide the information set forth in §1.98(b). There is no requirement that a form PTO-1449 be used (MPEP §609 merely says that use of this form is "encouraged") and no prohibition on submitting a copy of a form PTO-1449 or form PTO-892 from a prior case. Indeed, the re-use of such forms is desirable as it avoids error in transferring the information, and evidences that the reference was considered in a prior application. A previously accepted PTO-1449, or an examiner-prepared PTO892, necessarily complies with §1.98(b).

6. ☐ Sequence Listing  
Applicants hereby submit the following:
- ☐ a paper copy of a "Sequence Listing", complying with §1.821(c), to be incorporated into the specification
  - ☐ the Sequence Listing in computer readable form, complying with §1.821(e) and §1.824,
  - ☐ The computer readable form in this application is identical with that filed in application number \_\_\_\_\_ filed \_\_\_\_\_. In accordance with 37 CFR 1.821(e), please use the computer readable form filed in that case

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on or about \_\_\_\_\_ as the computer readable form for the instant application. It is understood that the Patent and Trademark Office will make the necessary change in "General Information", including changes in the application number and filing date, for the computer readable form that will be used for the instant application.

The undersigned attorney or agent hereby states as follows:

- (a) this submission is not believed to include new matter [§1.821(g)]; and
- (b) the contents of the paper copy and the computer readable form of the Sequence Listing, are believed to be the same [§1.821(f) and §1.825(b)].

- [ ] The description has been amended to comply with §1.821(d).
- [ ] This application includes sequences first set forth in a prior U.S. benefit application filed before the effective date (October 1, 1990) of the sequence listing rules, and hence which need not be included in the sequence listing.
- [ ] This application sets forth only sequences first set forth in a prior U.S. benefit application, filed prior to the effective date (July 1, 1998) of the revised sequence listing rules, and hence need only comply with the original rules.

Under the revised sequence listing rules, each sequence must be classified in <213> as an "Artificial Sequence", a sequence of "Unknown" origin, or a sequence originating in a particular organism, identified by its scientific name. Neither the rules nor the MPEP clarify the nature of the relationship which must exist between a listed sequence and an organism for that organism to be identified as the origin of the sequence under <213>. The identification of an organism in <213> should not be construed as an admission that the sequence *per se* occurs in nature in said organism. Similarly, designation of a sequence as "artificial" should not be construed as a representation that the sequence has no association with any organism. The Examiner should be able to judge the relationship of

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the enumerated sequences to natural sequences by giving full consideration to the specification, the art cited therein, any further art cited in an IDS, and the results of his or her sequence search against a database containing known natural sequences.

7. If reliance is made on a declaration filed in a prior application, then

[X] The undersigned attorney of record hereby revokes the power of attorney previously granted to any attorney who is not associated with Customer Number 001444.

[X] The undersigned attorney of record hereby grants associate power of attorney to all attorneys associated with Customer Number 001444, to prosecute this application and transact all business in the Patent and Trademark Office.

8. [X] The Commissioner is hereby authorized to charge payment of the following additional fees associated with this communication or credit any overpayments to Deposit Account No. 02-4035:

[X] Any additional filing fees required under 37 CFR §1.16.

[X] Any patent application processing fees under 37 CFR §1.17.

[X] The Commissioner is hereby authorized to charge payment of the following fees, based on any paper filed during the pendency of this application or any CPA thereof, to effect any amendment, petition, or other action requested in said paper or credit any overpayments to Deposit Account No. 02-4035:

[X] Any patent application processing fees under 37 CFR §1.17.

[ ] The issue fee set in 37 CFR §1.18 at or before mailing the Notice of Allowance, pursuant to 37 CFR §1.311(b).

[X] Any filing fees under 37 CFR §1.16 for presentation of extra claims.

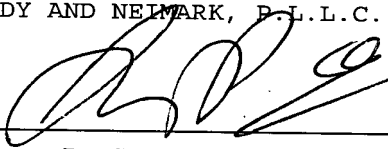
[X] If a paper is untimely filed in this or any CPA thereof by Applicant(s), the Commissioner is hereby petitioned under 37 CFR §1.136(a) for the minimum extension of time required to make said paper timely. In the event a petition for extension of time is made under the provisions of this paragraph, the

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Commissioner is hereby requested to charge any fee  
required under 37 CFR §1.17 to Deposit Account 02-4035.

[X] The Commissioner is hereby authorized to credit any overpayment  
of fees accompanying this paper to Deposit Account No. 02-4035.

Respectfully submitted,  
BROWDY AND NEWMARK, P.L.L.C.

By:   
Iver P. Cooper  
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